

## **REMARKS**

Claims 1-7, 12 and 13 are currently pending. In a final Office Action dated April 17, 2008, the Examiner rejected claims 1, 2, and 4 under 35 U.S.C. §103(a) as being unpatentable over Kokko (U.S. patent no. 5,790,534) in view of Applicant's Admitted Prior Art (AAPA). The Examiner rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and further in view of Laakso (U.S. patent no. 6,671,512), rejected claims 5, 7, 12, and 13 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and further in view of Uesugi (U.S. patent application no. 2003/0072266), and rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and Uesugi and further in view of Simonsson (U.S. patent no. 6,950,669). In an Advisory Action dated September 29, 2008, the Examiner reiterated the rejections. The rejections and objections are traversed and reconsideration is hereby respectfully requested.

Claim 1 has been amended and new claims 14-17 have been added. Support for the amendment and new claims may be found on pages 16-17 of the specification.

The Examiner rejected claims 1, 2, and 4 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA. Claim 1 has been amended to provide a method for determining a jitter buffer depth target that includes determining, by a wireless infrastructure, a radio frequency (RF) load metric corresponding to a base site, comparing, by the wireless infrastructure, the determined RF load metric to an RF load threshold to produce a comparison, and determining, by the wireless infrastructure, a jitter buffer depth target of a receiving mobile station based on the comparison. These features are not taught by Kokko or the AAPA.

In rejecting claim 1, the Examiner contended that Kokko teaches a base site (BS) determining a radio frequency (RF) load metric corresponding to the BS and comparing the determined RF load metric to an RF load threshold to produce a comparison. The Examiner contended that Kokko further teaches determining whether the BS has adequate resources to handle transmissions to/from mobile stations. The Examiner acknowledged that Kokko fails to teach that the resources are a jitter buffer depth, but

contended that AAPA teaches a receiving communication device (in this instance, a cellular radiotelephone) that includes a jitter buffer and that this may be interpreted to teach a BS including a jitter buffer, and further which BS jitter buffer may be among the resources controlled by the BS in determining whether a system overload will occur.

Claim 1, as amended, teaches a wireless infrastructure controlling a jitter buffer depth of an MS. Kokko's teaching of a BS determining of an RF load metric and comparing the determined RF load metric to an RF load threshold cannot be construed to teach a controlling, by the BS, of anything other than resources at the BS. That is, Kokko teaches the BS allocating spreading codes (channels) and data rates. These are resources that are allocated to a BS and that are capacity constrained at the BS. Nowhere does Kokko teach a BS with knowledge of resources internal to an MS or a controlling of resources that are solely within the province of an MS. The fact that the AAPA teaches another type of resource, and more particularly a jitter buffer, that is resident in an element other than a BS, and in particular at an MS, does not in any way teach or suggest the BS controlling such a resource.

Therefore, neither Kokko nor AAPA, individually or in combination, teaches the features of claim 1 of determining, by a wireless infrastructure, a jitter buffer depth target of an MS based on a comparison, by the wireless infrastructure, of an RF load metric determined by the wireless infrastructure to an RF load threshold. Accordingly, the applicant respectfully requests that claim 1 may now be passed to allowance.

The Examiner rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and Uesugi and further in view of Simonsson, contending that Simonsson teaches determining to transmit frames at a higher power level when a determined RF load is lower than an RF load threshold (FIG. 6, step 604, and col. 7, lines 51-58). The applicant respectfully disagrees.

The cited step and section of Simonsson merely state that power may be increased or decreased to bring a data rate to a target level. Nothing here indicates that Simonsson is teaching anything other than the well-known concepts of increasing a transmit power in a high interference environment to improve reception and achieve a target data rate,

and decreasing a transmit power in a low interference environment to conserve resources and minimize interference with other channels, as a lower signal power then may be applied while implementing acceptable reception (or the next paragraph of Simonsson which similarly teaches the well-known concept of increasing a transmit power in a high interference environment to achieve a target C/I and decreasing a transmit power in a low interference environment to conserve resources and minimize interference with other channels, as a lower signal power may be applied to achieve the target C/I). In fact, column 1, lines 20-27, of Simonsson clearly indicate that this is the teaching of Simonsson.

In the Advisory Action, the Examiner contended that Simonsson is equivalent to claim 6 in that Simonsson teaches to increase transmit power when a quality measurement, such as C/I, is below a threshold, that is, indicates high interference. However, claim 6 specifically teaches transmitting frames at a higher power level when a determined *RF load* is lower than an *RF load threshold*. Typically, an RF load being below an RF load threshold is an indicator of *low interference*, while an RF load above an RF load threshold is an indicator of high interference. Therefore, the teachings of Simonsson actually suggest the opposite of the teachings of claim 6. Neither Simonsson, nor any of Kokko, AAPA, or Uesugi, teaches this feature of claim 6.

For the above reasons, and since claims 2-7, 12, and 13 depend upon allowable claim 1, the applicant respectfully requests that claims 2-7, 12, and 13 may now be passed to allowance.

As the applicant has overcome all substantive rejections and objections given by the Examiner and has complied with all requests properly presented by the Examiner, the applicant contends that this Amendment, with the above discussion, overcomes the Examiner's objections to and rejections of the pending claims. Therefore, the applicant respectfully solicits allowance of the application. If the Examiner is of the opinion that any issues regarding the status of the claims remain after this response, the Examiner is invited to contact the undersigned representative to expedite resolution of the matter. Furthermore, please charge any additional fees (including any RCE and extension of time fees), if any are due, or credit overpayment to Deposit Account No. 50-2117.

Respectfully submitted,  
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